

## **2 FAM 970**

# **PUBLIC-PRIVATE PARTNERSHIPS**

*(CT:GEN-434; 12-01-2014)*  
*(Office of Origin: S/GP)*

## **2 FAM 971 SCOPE**

### **2 FAM 971.1 Policy**

*(CT:GEN-434; 12-01-2014)*

- a. A public-private partnership is a collaborative working relationship with nongovernmental partners in which the goals, structure, and governance, as well as roles and responsibilities, are mutually determined. Four common reasons for pursuing partnerships are:
  - (1) They advance a shared objective;
  - (2) They enhance impact through resource sharing;
  - (3) They improve programmatic reputation/visibility; and
  - (4) They achieve mutual programmatic goals.

A broad principle is that an agency should be able to show that it will be more effective if it works through a partnership and that associated resources, including staff time, will serve the Agency's statutory purposes.
- b. To ensure that these partnerships further the Department's interests, to preserve the integrity of government, and to avoid actual or apparent impropriety, Department officials may enter into partnerships only in accordance with the regulations in this section. The process for entering into a short-term partnership, or "co-hosted" event is at 2 FAM 974. To this end, Department officials should ensure that all employees involved in entering into partnerships become thoroughly familiar with the contents of these regulations. All public-private partnerships, whether occurring domestically or abroad, are required to follow the procedures outlined here.
- c. Do not use public-private partnerships as vehicles for the Department to contract for services, staff, facilities or goods. In such cases, Federal Acquisition Regulations (FAR) provisions control the relationship between the entity (contractor) and the Department. The provisions in this subchapter do not apply to agreements to which the FAR does not apply, such as those for real property that are authorized pursuant to the Foreign Service Buildings Act of 1926. Consult your bureau's lawyers for advice.

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- d. Offices or posts abroad conducting solicitations and acceptance of gifts to the Department requiring approval from the Under Secretary for Management (hereinafter, the Under Secretary) under 2 FAM 960 must use the process at 2 FAM 972.2.
- e. The Under Secretary is the Department official responsible for the general direction and overall supervision of the Department's public private partnership program. He or she is responsible for the approval of all partnerships involving the Department of State for official purposes, unless the Secretary, a Deputy Secretary, or the Under Secretary delegates this authority in writing. Any employee to whom partnership approval authority has not been delegated must obtain the approval of the Under Secretary or his or her designee before entering into a partnership.
- f. A Department public-private partnership must not impair or otherwise affect the functions of the Overseas Security Advisory Council (OSAC).
- g. Direct questions regarding these policies to the *Secretary's Office of Global Partnerships (S/GP)*.

## **2 FAM 971.2 Authorities**

*(CT:GEN-434; 12-01-2014)*

- a. General authorities of the Secretary of State for the conduct of foreign relations and management of the Department, 22 U.S.C. *2651a*.
- b. The Foreign Assistance Act of 1961, as amended; 22 U.S.C. *2151 et seq*.
- c. Mutual Educational and Cultural Exchange Act of 1961, as amended; 22 U.S.C. 2451 et seq.
- d. United States Information and Educational Exchange Act of 1948, as amended; 22 U.S.C. 1431 et seq.
- e. The U.S. Leadership against HIV/AIDS, Tuberculosis, and Malaria Act of 2003; 22 U.S.C. *7601 et seq*.
- f. Migration and Refugee Assistance, 22 U.S.C. *2601 et seq*.
- g. *Delegation of Authority No. 198, dated September 16, 1992.*
- h. *Other authorities as relevant.*

## **2 FAM 971.3 Legal Guidance**

*(CT:GEN-406; 05-03-2013)*

- a. Be aware that there are issues that might arise that may limit the ability of an office to pursue and/or enter into a particular partnership. Examples of such issues include the following:
  - (1) The Conflict of Interest Statute at 18 U.S.C. 208 and ethics regulations at 5

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CFR 2635 generally prohibit employees from participating officially in a matter that could affect an entity with which the employee has an outside economic or personal relationship. The regulations also prohibit inappropriate official endorsement of an outside entity and the misuse of an official position. These rules inform Department of State policy as to the appropriateness of any particular party and the terms of the partnership;

- (2) The Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix:
  - (a) FACA is designed to ensure that Congress and the public are kept informed with respect to the number, purpose, membership, activities, and cost of Federal advisory committees. A member of the public can sue the Department if he or she believes that the Department has not complied with FACA;
  - (b) For purposes of this chapter, an advisory committee is any committee, panel, task force, or other similar group, established by a Department official for the purpose of obtaining advice or recommendations on issues or policies within the scope of the official's responsibilities; and
  - (c) FACA should not be an issue in most public-private partnerships:
    - (i) The partner is not primarily providing advice or recommendations to the Department; it is primarily performing operations in partnership with the Department. If the partner does provide advice to the Department, it is only one entity, and would not be a "committee" for purposes of FACA; and
    - (ii) However, it is conceivable that the Department might call upon the partner, together with other entities, to make recommendations. There also might be more than one partner, and the Department might ask them for consensus advice on a policy matter. This process might be subject to FACA. If you have any questions about FACA, consult the Office of the Assistant Legal Adviser for Management (L/M); and
- (3) The Government Corporation Control Act (GCCA, 31 U.S.C. 9102):
  - (a) The GCCA prohibits a Federal agency from establishing or acquiring a corporation that is an agent of the U.S. Government unless specifically authorized by Federal law; and
  - (b) Consult the Office of the Legal Adviser for a GCCA review if the public-private partnership may operate through a new or acquired corporation or other private legal entity. The GCCA review will consider whether the corporation or legal entity is being created by Department employees, receiving funding solely from the Department, being controlled by Department employees, or performing functions that belong to the Department.

- b. Other laws such as the Paperwork Reduction Act may affect a partnership, or the ability of an office to enter into a particular partnership.

## 2 FAM 971.4 Subchapter Definitions

(CT:GEN-406; 05-03-2013)

**Employee** means an appointed officer or employee of the Department, including a locally employed staff, a special U.S. Government employee, or an expert or consultant;

**Nonfederal entity** includes any individual, private, or commercial entity other than the U.S. Government, including but not limited to corporations, nonprofit organizations or associations, international or multinational organizations, and foreign, State, tribal, or local governments.

## 2 FAM 972 PROCEDURE

### 2 FAM 972.1 Evaluating the Suitability and Necessity of a Public-Private Partnership

(CT:GEN-406; 05-03-2013)

- a. Appropriate partnerships are those that contain discrete, identifiable Department goals or initiatives that would be best accomplished through leveraging the resources or expertise of a private entity. An office interested in entering into a partnership should be able to articulate why it would be more effective and efficient to work with an outside organization than alone or with other offices of the U.S. Government. Generally, a post abroad is the relevant organizational unit for evaluating the propriety of a partnership entered into abroad.
- b. When deciding whether a public-private partnership may be warranted in any particular situation, the requesting office should first consider whether the particular goal or initiative is suitable for a partnership.
- c. Conditions indicating that a particular goal or initiative may be suitable for a partnership include:
  - (1) Where it is anticipated that addressing the issues involved will require or benefit from contributions, expertise or substantial participation from outside the U.S. Government;
  - (2) Where nongovernmental assets are available and there is nongovernmental interest in partnering to address the issues; and
  - (3) Where the Department is able and willing to devote the staff, time and funding to support the collaborative process.

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- d. Conditions indicating that a particular goal or initiative might not be suitable for a partnership include:
  - (1) Where the affected parties do not see the goals as a high enough priority to commit time and energy to a collaborative process;
  - (2) Where there are insufficient resources (staff time, funds, etc.) to adequately support the collaborative process;
  - (3) Where partners under consideration have demonstrated an unwillingness to cooperate;
  - (4) Where it is unclear that the Department needs to leverage the resources or expertise of the private sector in order to reach the goal of the initiative; or
  - (5) Where there is evidence that the Department would more effectively reach the goal of the initiative on its own.
- e. A partnership should generally not be entered into if the primary purpose is to facilitate a gift to the Department. In such cases, 2 FAM 960 procedures should be followed.
- f. If an office or post determines that a private-public partnership is appropriate for a particular initiative or goal, the office or post must consult its bureau's cognizant L office to determine if the activity is authorized.

## **2 FAM 972.2 Due Diligence: Process for Identifying and Vetting Partners**

*(CT:GEN-434; 12-01-2014)*

- a. Once the office has confirmed that the particular initiative is suitable for a partnership and the activity is authorized, the office should determine who in the private sector fits its needs. However, when seeking potential partners, the office must conduct a broad enough search so as to avoid giving the appearance that the office is affording a preference to any one particular partner over another.
- b. When considering partnering with any particular entity, the office should familiarize itself with the potential partners' goals and objectives and look for similarities that overlap with the goals of the Department.
- c. The office should also conduct sufficient research on a potential partner to make sure the partner has the necessary resources or expertise to meet the goals of the partnership.
- d. After identifying potential partners, the office must obtain from *S/GP* a due diligence informational memorandum for all nonfederal entities potentially involved in the partnership.
- e. The office should then review the due diligence memorandum carefully and make a determined judgment as to each potential partner that entering into a

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partnership with that partner would not cause embarrassment or harm to the Department or its reputation.

- f. The office should also make a reasoned judgment that entering into the partnership would not give the appearance of a conflict of interest that would cause a reasonable person to believe that any Department official involved had lost objectivity in the performance of his or her official duties.

## **2 FAM 972.3 Approval of the Partners**

*(CT:GEN-434; 12-01-2014)*

- a. The requesting official must prepare an action memorandum to the Under Secretary, and obtain clearances from the Legal Adviser's Office (which must include clearances from L/M, Ethics and Financial Disclosure (L/EFD), and the L office with principal responsibility for advising on the requesting office's programs), *S/GP*, as well as other relevant offices. This memorandum must include the following:
  - (1) A detailed description of the proposed partnership and its goals;
  - (2) A list of the potential partners to be approached and any relevant information from the due diligence information memorandum, including any potential conflicts or information that could cause harm or embarrassment to the Department;
  - (3) An explanation of any funding to be used in the partnership, including appropriated funds or alternative sources of funding and an explanation of funding or personnel to be provided by the private sector partner;
  - (4) The importance to the U.S. Government of the proposed project;
  - (5) The anticipated duration of the partnership;
  - (6) Background concerning how the partner(s) was or were chosen;
  - (7) Whether the partnership will involve any solicitations from outside entities and if so, how the solicitations will be managed; and
  - (8) A draft of the expected Memorandum of Understanding reflecting the partnership arrangement and the responsibilities of each partner.
- b. The Under Secretary will generally not approve a request to partner with an entity that:
  - (1) Is seeking to obtain any business, benefit or assistance from the soliciting official or other officials in the same organizational unit;
  - (2) Conducts operations or activities that are regulated by the Department;
  - (3) Has interests that may be substantially affected by the performance or nonperformance of the requesting official's duties;
  - (4) Appears to be entering into the partnership with the expectation of

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obtaining advantage or preference in dealing with the requesting official, office or the Department; or

(5) Has major non-routine business with the Department

- c. The Under Secretary will generally also not approve a request to partner if there is any evidence that could cause a reasonable person to question the impartiality of any Department official involved in the partnership.
- d. The requesting office shall be responsible for providing the necessary information to the Under Secretary to allow a determination about whether any of these factors exist with respect to a particular proposal.

## **2 FAM 973 APPROVAL OF THE PARTNERSHIP AND THE TERMS OF THE MEMORANDUM OF UNDERSTANDING**

*(CT:GEN-406; 05-03-2013)*

- a. Once the Under Secretary has approved the partners, the requesting office may pursue finalization of a Memorandum of Understanding, setting forth the anticipated goals, rights and responsibilities of the partners.
- b. The requesting office must then seek approval of the terms of the Memorandum of Understanding from the appropriate chief of mission, bureau head, or designee, with clearance from the official in the Office of the Legal Adviser with principal responsibility for advising on the requesting office's programs.
- c. A template of a Memorandum of Understanding establishing a public-private partnership is at 2 FAM Exhibit 973.
- d. Once the authorized official has approved the partnership, a bureau, post or office may commence authorized activities.

## **2 FAM 974 "SHORT-TERM" PARTNERSHIPS**

*(CT:GEN-403; 01-30-2013)*

- a. For purposes of these provisions, a short-term partnership or "co-hosted event" is a collaboration with an outside entity for the purposes of a short-term event intended for a defined, limited purpose. Generally, a short-term partnership would involve a reception, meeting or conference intended to last no more than a few days and created for the purpose of disseminating and receiving information useful to the Department.
- b. Chiefs of mission or bureau heads or designees, as relevant, may, without the need to receive prior authorization from the Under Secretary for Management, enter into or authorize an office to enter into a "short-term" partnership.

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- c. An official authorized to approve a short-term partnership must follow the guidelines set forth in 2 FAM 972.3 as if the official were the Under Secretary.

## **2 FAM 975 ONGOING IMPLEMENTATION**

*(CT:GEN-403; 01-30-2013)*

Once approved, the activities of a partnership may evolve over time and frequently additional partners are added to existing partnerships to further shared objectives. Ongoing legal review may be required to ensure that legal issues, including conflict of interest requirements, are identified and appropriately addressed. Take care to ensure that partnerships operate within the scope of the initial approval. Consult L for review of activities that may be outside of the scope of the initial approval and for guidance on whether additional approval from the Under Secretary is necessary.

## **2 FAM 976 THROUGH 979 UNASSIGNED**

## **2 FAM EXHIBIT 973**

# **TEMPLATE OF A MEMORANDUM OF UNDERSTANDING ESTABLISHING A PUBLIC- PRIVATE PARTNERSHIP**

*(CT:GEN-406; 05-03-2013)*

### **MEMORANDUM OF UNDERSTANDING the U.S. Department of State and [NAME OF PARTNER ORGANIZATION/S]**

#### **I. Purpose**

The Office of [NAME OF BUREAU] of the U.S. Department of State ("BUREAU Abbv") and the [NAME OF PARTNER] ("Abbv of PARTNER") share the common goal of [COMMON GOAL – typically promoting, hosting, etc]. For this reason, "BUREAU Abbv" and "Abbv of PARTNER" (individually, "the "Participant"; collectively, "the Participants") enter into this Memorandum of Understanding ("MOU") to combine efforts, resources and ideas in order to pursue an initiative of mutual interest related to [COMMON GOAL]. The purpose of this MOU is to set forth the understandings and intentions of the Participants with regard to their shared objectives. The Participants are entering into this MOU while wishing to maintain their own separate and unique missions and mandates.

#### **II. [OPTIONAL] Authorities**

The Department enters into this MOU pursuant to its authorities under Section 5 of the State Department Basic Authorities Act (22 U.S.C. 2672), and [ANY OTHER RELEVANT AUTHORITIES].

#### **III. Objectives, Roles, and Responsibilities**

This MOU provides for a broad-based core alliance between[among] the Participants. It reflects a shared value and focus for seeking joint collaboration opportunities within each organization's respective vision, mission, and program focus within the context of [COMMON GOAL].

[OPTIONAL] In preparation for the [EVENT] and its accompanying programs or partnerships, the Participants intend to work together to achieve common goals.

[PARTNER]

[Insert description of partner's mission and activities in which it engages].

[PARTNER] has no formal relationship with the DOS or the U.S. Government, and is not subject to the control or direction of the DOS or the U.S. Government within the scope of this partnership.

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[PARTNER] intends to:

1. FIRST ACTIVITY
2. ADDITIONAL ACTIVITY
3. ADDITIONAL ACTIVITY [ETC]

The [BUREAU], subject to the availability of funds, intends to:

1. FIRST ACTIVITY
2. ADDITIONAL ACTIVITY [ETC]
3. [OPTIONAL] The [BUREAU] intends for its liaison to assist [PARTNERSHIP] with its review of potential partners to ensure that they are suitable partners and that there is no conflict of interest with relevant Department programs and operations. To this end, [PARTNERSHIP] Members intend to provide details of potential private sector partners to [BUREAU] before entering into discussions to pursue a partnership, so that [BUREAU] can coordinate the necessary due diligence.

[OPTIONAL] In the event a private sector partner desires to contribute funds or in-kind contributions directly to the Department of State for existing Department funded programs, [BUREAU] will seek and obtain approval from the Department.

**V. [OPTIONAL] Management**

[DESCRIBE TYPE OF PARTNERSHIP]

[OPTIONAL] For the purposes of coordinating activities under this MOU, including fundraising, determining an appropriate allocation of private sector funds, and identifying entities and activities to/for which funds will be disbursed, the Participants may create an operational committee, which may be referred to as the Coordinating Committee. The Coordinating Committee will not provide advice; it will itself decide on activities for the Partnership to pursue, subject to the availability of statutory authority and appropriated funds.

The Participants expect that the Coordinating Committee will consist of Department and

[PARTNER] representatives. Each Participant will choose its representatives on the Coordinating Committee.

The Coordinating Committee would meet as often as mutually agreed by the Participants but not less frequently than monthly.

The Coordinating Committee may wish to identify and include others interested in assisting in advancing the PPP mission and activities. The Participants will mutually agree upon adding additional members to the Coordinating Committee.

[DESCRIBE REGULAR PLANNED MEETINGS]

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Use by the Partner of the State Department Seal or other promotional material referring to the Partnership must be approved in advance by the Department.  
[DESCRIBE USE OF DEPARTMENT LOGO or SEAL].

**VI. Dispute Resolution**

In the event of a disagreement under this MOU, the Participants intend to negotiate to resolve the disagreement in good faith.

**VII. Publicity**

[OPTIONAL] The Participants intend to work together and coordinate appropriate publicity in support of the PPP and its activities. They propose, among other things, that a press release be created for publication announcing the signing of this MOU and subsequent projects. Any communications and/or press releases referencing the PPP must be approved in writing by both Participants.

**VIII. Designated Points of Contact**

The primary points of contact and liaison for each Participant to this MOU are as follows:

The Department: [Information listed here].

[PARTNER]: [Information listed here].

**IX. Effective Date, Duration, and Termination**

This MOU is effective from the date of execution by both Participants until [OPTIONAL] the earlier of either the completion of the PPP goals described above or termination of the MOU or a period of time [example, 3 years]. However, the duration may be extended beyond [ABOVE AGREED TIME FRAME] if both Participants so agree in writing. In addition, this MOU may be amended if both Participants agree in writing. Either Participant may terminate this MOU at any time upon advance written notice to the other, with such termination becoming effective upon the date set forth in such written notice.

[OPTIONAL] for an event or forum funded by the PARTNER] In the event that [PARTNER] does not raise sufficient funds to cover the entire cost of the event, the Participants understand that [PARTNER] will cancel the Event.

**X. Funding and Legal Effect**

Nothing in this MOU shall be construed as superseding or interfering in any way with other agreements or contracts entered into either prior to or subsequent to the signing of this MOU. The Participants further specifically acknowledge that this MOU is not an obligation of funds, nor does it constitute a legally binding commitment by either Participant or create any rights in any third party.

This MOU does not create any legal or binding relationship between the Participants, or commit either Participant to the obligation of any funding in furtherance of the goals of the MOU. It is intended to be implemented consistent with applicable law and is subject to the availability of

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appropriations.

This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, the U.S. Department of State, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, the Participants, acting through their duly authorized representatives, have caused this MOU to be signed in their names and delivered as of this \_\_\_\_ day of [MONTH], [YEAR].

**For the U.S. Department of State**

**For [PARTNER]**

NAME

NAME

TITLE

TITLE